

ADMINISTRATIVE PANEL DECISION

Amiral Holding SAS v. Hassan tariq
Case No. D2024-3451

1. The Parties

The Complainant is Amiral Holding SAS, France, represented by Sarrut Avocats, France.

The Respondent is Hassan tariq, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <be-relaxspa.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 23, 2024. On August 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 23, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Anonymous) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 26, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on August 27, 2024.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 16, 2024. The Response was filed with the Center on August 27, 2024.

The Center appointed Adam Taylor as the sole panelist in this matter on September 23, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration

of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant, which has traded under the mark BE RELAX since around 2004, operates spa and relaxation services in over 50 airports worldwide, including in eight locations in Abu Dhabi and Dubai airports.

The Complainant owns a number of registered trade marks including European Union figurative trade mark No. 003884251 for BE RELAX, registered on December 1, 2008, in classes 3, 10 and 44, as well as United Arab Emirates ("UAE") figurative trade mark No. 296573 for BE RELAX SPA YOUR WELLNESS CLOUD, published on November 29, 2018.

The Complainant operates a website at "www.berelax.com".

The disputed domain name was registered on January 27, 2024.

When reviewed by the Panel on September 20, 2024, the disputed domain name resolved to a website branded "BE RELAX MASSAGE CENTRE AND SPA", offering spa services at the "Be Relax Spa", also referred to as the "Be Smile Spa", at a location in Abu Dhabi. The contact email address was given as "info@berelax.com".

According to a document produced by the Respondent, the Department of Economic Development in Abu Dhabi issued an "Economic License" in respect of an entity described as a "Sole Proprietorship L.L.C." regarding use of the trade name "BE RELAX SPA - L.L.C - O.P.C" ("the LLC") from October 19, 2023, to October 18, 2024. The entity was said to have been established on October 19, 2023, and the licensed economic activities comprised "Men Oriental Bath", "Men Personal Care And Beauty", "Women Massage and Relaxation Centre" and "Men Relaxation And Massage Centre".

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

B. Respondent

The Respondent contends that the Complainant has not satisfied all three of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Respondent contends that:

- the disputed domain name is associated with the LLC, which is duly registered and licensed to operate under this name in Abu Dhabi;
- this licence confirms the Respondent's legal right to use the trade name and operate the associated services, including online activities;
- the Respondent's business activities are in full compliance with local regulations and laws, as evidenced by the Respondent's economic licence, which explicitly permits the provision of its massage and relaxation services; and
- the Complainant has not provided any substantive evidence to support its claim that the disputed domain name infringes any trade mark or business rights.

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trade mark for BE RELAX for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "spa") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognised that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence satisfactorily demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Respondent effectively contends that it has used the disputed domain name for a bona fide offering of goods or services and/or that it has been commonly known by the disputed domain name, in accordance with paragraphs 4(c)(i) and (ii) of the Policy, respectively.

The Response has been signed by the Respondent as “Freelancer” on behalf of the LLC. In view of this, and the Economic Licence referred to in section 3 above, the Panel will proceed on the assumption that the LLC is the ultimate controller of the disputed domain name. Accordingly, references to the Respondent below should be treated as including the LLC.

In addition to the Economic Licence, the Respondent has produced a receipt dated May 4, 2024, addressed to the LLC, as tenant, for a payment relating to a unit at “Mina Towers”, as well as an Abu Dhabi electricity bill dated August 1, 2024, addressed to “BE RELAX SPA”.

In these circumstances, the Panel concludes that the Respondent is indeed operating a spa service at a premises in Abu Dhabi under the mark BE RELAX SPA.

That is not the end of the matter, however, because, as further discussed in section 6C below, the Panel considers that the evidence clearly demonstrates that the Respondent adopted its trading name in order to take unfair advantage of the Complainant’s rights and that the Respondent registered the disputed domain name and used it as part of that illicit scheme. Such use of the disputed domain name could not be said to be bona fide or otherwise legitimate.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes the following:

1. the Complainant has been trading under the mark BE RELAX for some 20 years;
2. the Complainant operates its spa and relaxation services in some 50 airports worldwide including in eight locations in Abu Dhabi and Dubai airports;
3. while “be” and “relax” are dictionary words, the combination of these terms is unusual and distinctive;
4. the Respondent has not explained how, why or when it selected the trading name BE RELAX SPA;
5. the Respondent has not denied that it was aware of the Complainant’s business, either when it established the LLC, apparently on October 19, 2023, or when it registered the disputed domain name on January 27, 2024, some three months later; and
6. the Respondent has not explained why it is using an email address that reflects the Complainant’s exact domain name <berelax.com>.

In these circumstances, the Panel concludes that, on the balance of probabilities, the Respondent was aware of, and deliberately selected its trading name, which reflects the Complainant’s distinctive mark, in order to target that mark. The Panel further finds that the Respondent registered and used the disputed domain name as part of that illicit scheme and in order to intentionally attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant’s trade mark for the purpose of promoting related and/or competing services in accordance with paragraph 4(b)(iv) of the Policy. The Panel notes that the Respondent has not included a prominent disclaimer on its website.

The Respondent objects that the Complainant has not provided any substantive evidence that the disputed domain name infringes any trade mark or business rights of the Complainant. However, the Panel is not concerned with infringement of intellectual property rights, which is a matter for a court. Rather, under the third element of the Policy, the issue for the Panel is whether or not the Respondent registered and used the disputed domain name in bad faith. Assessment of the Respondent’s likely motive, based on the record before the Panel, is a key part of that exercise. And, for reasons explained in detail above, including the distinctiveness of the Complainant’s mark and the Respondent’s lack of denial of awareness of the Complainant, the Panel considers that the evidence points strongly towards the Respondent having adopted

its trading name, and having registered and used the disputed domain name, in order to illicitly target the Complainant.

Furthermore, given these circumstances, the Panel does not consider that the fact that the Respondent secured the Economic Licence in Abu Dhabi is sufficient to justify the Respondent's illicit activities or to displace the Panel's conclusion that the Respondent registered and used the disputed domain name in bad faith.

The Panel finds that the Complainant has established the third element of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <be-relaxspa.com> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: October 7, 2024